

# **Tentative Rulings for November 22, 2022**

## **Department S302**

**To request oral argument, you must notify  
Judicial Secretary Tiffany Uhls at (760) 904-5722 and  
inform all other counsel no later than 4:30 p.m.**

This court follows California Rules of Court, Rule 3.1308 (a) (1) for tentative rulings (see Riverside Superior Court Local Rule 3316). Tentative Rulings for each law & motion matter are posted on the Internet by 3:00 p.m. on the court day immediately before the hearing at <http://www.riverside.courts.ca.gov/tentativerulings.shtml>. If you do not have Internet access, you may obtain the tentative ruling by telephone at (760) 904-5722.

To request oral argument, no later than 4:30 p.m. on the court day before the hearing you must (1) notify the judicial secretary for Department S302 at (760) 904-5722 and (2) inform all other parties of the request and of their need to appear telephonically, as stated below. If no request for oral argument is made by 4:30 p.m., the tentative ruling **will become the final ruling** on the matter effective the date of the hearing. **UNLESS OTHERWISE NOTED, THE PREVAILING PARTY IS TO GIVE NOTICE OF THE RULING.**

**IN LIGHT OF THE CORONAVIRUS PANDEMIC; AND UNTIL FURTHER NOTICE, COUNSEL AND SELF-REPRESENTED PARTIES ARE ENCOURAGED TO APPEAR AT ANY LAW AND MOTION DEPARTMENT REMOTELY WHEN REQUESTING ORAL ARGUMENTS.**

**REMOTE APPEARANCES:** The court uses Zoom for remote appearances. Parties can log into Zoom on their device or opt to call into the scheduled hearing by using one of the following Zoom telephone numbers and the meeting ID for this department:

- Call-in Numbers: 1 (833) 568-8864 (TOLL FREE); 1 (669) 254-5252;  
1 (669) 216-1590; 1 (551) 285-1373 or 1 (646) 828-7666
- Zoom Meeting ID: **161 954 8695**

Please **MUTE** your phone until your case is called and it is your turn to speak. It is important to note that you must call fifteen (15) minutes prior to the scheduled hearing time to check in or there may be a delay in your case being heard.

For additional information and instructions on telephonic appearances, visit the court's website at: <https://www.riverside.courts.ca.gov/PublicNotices/remote-appearances.php> .

**Effective May 3, 2021, official court reporters will not be available in unlimited civil for any pretrial proceedings, law and motion matters, case management hearings, civil restraining orders, and civil petitions. (See General Administrative Order No. 2021-19-1)**

1.

CVSW2000782	CANCHOLA VS GENERAL MOTORS, LLC	MOTION FOR ATTORNEY'S FEES BY RICARDO CANCHOLA, RICARDO G CANCHOLA
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**Tentative Ruling:**

The billing rates offered from within Plaintiff's firm are reasonable for the legal community in this area and in this discipline. Overall the hours billed appear reasonable. However, the templated discovery responses at 6 hours seemed high. There were some issues with duplicative billing for drafting of ruling notices. There is nothing in the record to show the matter was ever heard on an XP basis, so billing for that seems excessive. After considering the nature of the case and the above concerns, the court finds that a reasonable attorney's fees amount is \$44,867.50.

On the issue of taxing costs (court reporter fees), this issue is not lawfully before the court.

2.

CVSW2104303	THORPE VS GARDINER	MOTION FOR SANCTIONS
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**Tentative Ruling:**

This has been continued to March 23, 2023.

3.

CVSW2205041	RAINIER VS PARADISE CHEVROLET CADILLAC, A CALIFORNIA CORPORATION	PETITION TO COMPEL ARBITRATION BY PARADISE CHEVROLET CADILLAC, A CALIFORNIA CORPORATION
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**Tentative Ruling:**

The RJN by both sides is GRANTED. Plaintiff's objections are OVERRULED. The Motion is DENIED.

This court is not in a position to perform the functional equivalent of reconsidering its previous order regarding severance. Judge Riemer found that severing the offending clauses would be inappropriate, and enforcing Exhibit A would have the effect of just severing the offending clauses from the agreement Judge Riemer found to be unconscionable. For that reasoning, the court declines to consider enforcing Exhibit A. Thereafter the court makes the same findings as those made by Judge Riemer which stated:

"Here, the Arbitration Agreement does not satisfy the *Armendariz* requirements. The first concern is that there is only a required written opinion for awards above \$50,000.00. To the extent an employee sought to challenge an award for under \$50,000.00, the employee and the court would have no understanding of the basis for the arbitrator's award and whether it could be challenged under California law. The requirement for a written award, for all awards, is a significant requirement

and absent from the present Arbitration Agreement. (See *Wherry v. Award, Inc.* (2011) 192 Cal. App. 4th 1242, 1248 [ the written decision must be " adequate enough Page 3 of 5 to allow judicial review."].) The reply argues the provision could be severed from the agreement, but then the agreement would have no requirement for a written award, and still not meet the Armendariz requirements. Plaintiff next argues that right to appeal is one- sided because the right to appeal is limited to awards above \$ 50,000.00; that is, the employer may appeal to another arbitrator for a high award, but the employee does not have the same right to appeal a low award. Plaintiff is correct that the appeal provision lacks mutuality. As our Supreme Court has held when considering what the defendant characterizes as " an identical provision": " We therefore conclude that the arbitral appeal provision in this particular agreement is unconscionably one- sided and may not be enforced." (*Little v. Auto Stiegler, Inc.* (2003) 29 Cal. 4th 1064, 1074.) The *Little* court went on to decide that the defect in the agreement could be cured by severing the " appellate arbitration provision." (*Little v. Auto Stiegler, Inc., supra*, 29 Cal. 4th at p. 1076.) The same severance would not cure the situation here. Severance is not available when there are multiple provisions that violate California law. (Id., p. 1074.) In *Little*, only the appellate provision was at issue. Here, the plaintiff correctly challenges both that provision and the provision that limits written decisions to awards over \$ 50,000.00. Therefore, the Court is not persuaded that severance is appropriate."

4.

CVSW2205276	JIMENEZ VS GENERAL MOTORS, LLC	DEMURRER BY GENERAL MOTORS, LLC
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**Tentative Ruling:**

The Demurrer is OVERRULED. 10 days to Answer.

5.

CVSW2205276	JIMENEZ VS GENERAL MOTORS, LLC	MOTION TO STRIKE COMPLAINT BY GENERAL MOTORS, LLC
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**Tentative Ruling:**

The Motion is DENIED.

6.

MCC2001005	WHITTLINGER VS HANNA	MOTION FOR SUMMARY JUDGMENT BY APEX RADIOLOGY MEDICAL GROUP, INC.
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**Tentative Ruling:**

With the dismissal on Nov 14, 2022, this Motion became MOOT.